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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

TROY ALLEN FROST,

Defendant and Appellant.

C062001

(Super. Ct. No. 08F8522)

Defendant Troy Allen Frost pled guilty to committing grand theft of personal property. (Pen. Code, § 487, subd. (a).) Consistent with defendant's plea bargain, the trial court sentenced him to 16 months in state prison. The court also ordered defendant to pay \$4,042.50 in victim restitution.

Defendant challenges the restitution order, contending (1) he was denied the right to a jury trial on the issue of restitution, and (2) the trial court erred in determining the amount of victim restitution. We shall affirm the order.

FACTS

The following factual summary is taken from the Redding Police Department report to which the parties stipulated as providing the factual basis for defendant's plea.

On July 23, 2008, Clint Meissner (an employee of Cal. Electro, Inc.) reported to the police that defendant took four high-voltage copper cables from Cal Electro's storage yard in Redding. Cal Electro had recently installed a surveillance camera in the area, and it recorded defendant stealing copper cables on July 11, 2008. Meissner described the stolen cables as ranging from 50 to 75 feet in length and having clips. He estimated the value of the cables at \$4,000.

A Redding Police Department officer contacted defendant the same day. Defendant initially denied taking the cables but later admitted that he took them. A search of defendant's personal storage unit revealed stripped copper wire insulation and an empty wire reel. Defendant said there had been 200 to 300 feet of copper wire on the spool, which he sold to North State Recycling.

DISCUSSION

I

Right to Jury Trial on the Issue of Victim Restitution

Defendant contends his Sixth Amendment right to a jury trial was violated because the trial court determined the amount of victim restitution to which Cal Electro was entitled. He argues that recognition of the right to a jury trial on the

issue of restitution is compelled by the United States Supreme Court's decisions in *Cunningham v. California* (2007) 549 U.S. 270 [166 L.Ed.2d 856] (*Cunningham*); *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403] (*Blakely*); and *Apprendi v. New Jersey* (2000) 530 U.S. 466 [147 L.Ed.2d 435] (*Apprendi*). We reject the argument.

The Sixth Amendment guarantees that “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury” (*Italics added.*) In *Cunningham, supra*, 549 U.S. 270 the United States Supreme Court held that “under the Sixth Amendment, any fact that exposes a defendant to a greater potential sentence must be found by a jury, not a judge, and established beyond a reasonable doubt, not merely by a preponderance of the evidence.” (*Id.* at p. 281, *italics added.*) *Cunningham* followed *Blakely v. Washington* (2004) 542 U.S. 296 [159 L.Ed.2d 403], in which the Supreme Court confirmed that “[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.” (*Id.* at p. 301, quoting *Apprendi, supra*, 530 U.S. at p. 490.) Thus, *Blakely* declared that the maximum sentence that a trial court may impose cannot exceed that warranted by “the facts reflected in the jury verdict or admitted by the defendant.” (*Blakely, supra*, at p. 303, *italics omitted.*) *Cunningham, Blakely*, and *Apprendi* concern the maximum punishment that a trial court may

impose in the absence of additional factual findings by a jury or admission by the defendant.

As we shall explain, victim restitution does not constitute punishment as does a jail or prison sentence. Consequently, victim restitution does not implicate a criminal defendant's right to trial by jury, and the Supreme Court's decisions in *Cunningham*, *Blakely*, and *Apprendi* are inapposite.

California law compels trial courts to order persons convicted of crimes to pay restitution to their victims. Subdivision (f) of Penal Code section 1202.4 mandates that "in every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court."

An order to pay victim restitution serves to compensate victims for crimes for their losses. Although "there are objectives - apart from simply providing victim indemnification - that underlie the state's policy of requiring a criminal defendant to pay restitution to his victim," the "*primary* purpose of victim restitution is to fully reimburse the victim for his or her economic losses." (*People v. Jennings* (2005) 128 Cal.App.4th 42, 57.) "[V]ictim restitution is limited to economic loss but is unlimited in the amount that can be ordered. The collection procedures for a restitution order are

clearly meant to be civil. [Citations.] . . . We conclude from the language of the governing statutes that the Legislature intended victim restitution as a civil remedy rather than as a criminal punishment.'" (*People v. Millard* (2009) 175 Cal.App.4th 7, 35, quoting *People v. Harvest* (2000) 84 Cal.App.4th 641, 649.)

In *People v. Millard*, the Court of Appeal rejected a claim that the Sixth Amendment provides a right to jury trial on the issue of victim restitution. The *Millard* court explained that "Penal Code section 1202.4's requirement that a trial court issue an order providing for full restitution of a victim's economic losses does not constitute a *sentencing choice* by the trial court. Rather, because that statute requires the court to award the victim full restitution, the court's determination of that amount in a restitution hearing by a preponderance of the evidence does not involve a defendant's Sixth Amendment right to a jury or proof beyond a reasonable doubt." (*People v. Millard*, *supra*, 175 Cal.App.4th at p. 36, italics added.)

Federal appellate courts have reached the same conclusion that the Sixth Amendment does not require jury trials on issues of victim restitution. (See, e.g., *United States v. Leahy* (3d Cir. 2006) 438 F.3d 328, 338 [collecting cases]; *United States v. Sosebee* (6th Cir. 2005) 419 F.3d 451, 461-462; *United States v. Behrman* (7th Cir. 2000) 235 F.3d 1049, 1054 [holding that "*Apprendi* does not affect the calculation of restitution"]; *United States v. Wooten* (10th Cir. 2004) 377 F.3d 1134, 1143-

1144.) We agree with their conclusion that the trial court has the prerogative to determine victim restitution.

Defendant's Sixth Amendment jury trial right was not violated by the trial court's determination of restitution to be paid to Cal Electro.

II

The Trial Court's Victim Restitution Determination

Defendant argues that even if he was not entitled to a jury trial on the issue of victim restitution, we must nonetheless reverse the order because the court abused its discretion in determining the amount to be paid to Cal Electro.

We review a challenge to the amount of victim restitution for abuse of discretion. (*People v. Baker* (2005) 126 Cal.App.4th 463, 468-469.) As this court recently noted, "'A victim's restitution right is to be broadly and liberally construed.'" (*People v. Moore* (2009) 177 Cal.App.4th 1229, 1231.) "'When there is a factual and rational basis for the amount of restitution ordered by the trial court, no abuse of discretion will be found by the reviewing court.'" [Citations.]' (*In re Johnny M.* (2002) 100 Cal.App.4th 1128, 1132.) However, a restitution order 'resting upon a "'demonstrable error of law'" constitutes an abuse of the court's discretion. [Citations.]' (*People v. Jennings* [*supra*,] 128 Cal.App.4th [at p. 49].) 'In reviewing the sufficiency of the evidence [to support a factual finding], the "'power of the appellate court begins and ends with a determination as to whether there is any substantial

evidence, contradicted or uncontradicted,' to support the trial court's findings." [Citations.] Further, the standard of proof at a restitution hearing is by a preponderance of the evidence, not proof beyond a reasonable doubt. [Citation.] "If the circumstances reasonably justify the [trial court's] findings," the judgment may not be overturned when the circumstances might also reasonably support a contrary finding. [Citation.] We do not reweigh or reinterpret the evidence; rather, we determine whether there is sufficient evidence to support the inference drawn by the trier of fact. [Citations.]" (*People v. Baker, supra*, 126 Cal.App.4th at pp. 468-469.)" (*People v. Millard, supra*, 175 Cal.App.4th at p. 26.)

Here, the trial court based its restitution order on the statement of loss submitted by Cal Electro. The court explained, "What I do have is the statement from the owner of Cal Electric - Electro, rather, stating ground cable, \$1,600 worth, 350 feet of 3/0 copper wire, 975, and 450 pounds of [copper] miscellaneous wire sizes at 215. [¶] [Cal Electro] totals that up to \$3,542.50. The probation officer tells us today that that sum took into consideration the \$500.00 [defendant] had already paid."

The value of the copper wire set forth in Cal Electro's statement of loss supports the trial court's \$4,042.50 victim restitution order. The statement of loss itemized the missing quantities of copper wire and calculated their cumulative value at \$3,542.50. As the trial court noted, this figure took into

account the \$500 that had already been paid by defendant. "Once the record contains evidence showing the victim suffered economic losses . . . this showing establishes the amount of restitution the victim is entitled to receive, unless challenged by the defendant." (*People v. Fulton* (2003) 109 Cal.App.4th 876, 886.)

Defendant argues that the trial court erred in issuing a "restitution order in the amount of \$4,042.50 based on Cal Electro's claim that [defendant] recycled 1,898 pounds of wire between January and July 21, 2008." In so arguing, defendant relies on his submission of a receipt from North State Recycling that listed his sales to North State Recycling during 2008.

Defendant fails to note that the trial court rejected this defense exhibit as having "very little evidentiary value" because its "believability is pretty low." Consequently, the trial court was entitled to accept Cal Electro's estimate that it had suffered an economic loss in the amount of \$4,042.50 as a result of defendant's theft.

The trial court did not abuse its discretion in determining victim restitution to be paid to Cal Electro. However, the record must reflect that defendant has paid \$500 in partial satisfaction of the restitution order.

DISPOSITION

The judgment is affirmed. The trial court shall prepare an amended abstract of judgment showing that defendant has paid \$500 in partial satisfaction of the restitution order of

\$4,042.50, and shall forward a certified copy of the amended abstract to the Department of Corrections and Rehabilitation.

SIMS, J.

We concur:

SCOTLAND, P. J.

CANTIL-SAKAUYE, J.